

108TH CONGRESS  
1ST SESSION

# S. 431

To amend the Solid Waste Disposal Act to impose certain limits on the receipt of out-of-State municipal solid waste.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2003

Mr. VOINOVICH introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Solid Waste Disposal Act to impose certain limits on the receipt of out-of-State municipal solid waste.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Municipal Solid Waste  
5 Interstate Transportation and Local Authority Act of  
6 2003”.

1 **SEC. 2. AUTHORITY TO PROHIBIT OR LIMIT RECEIPT OF**  
 2 **OUT-OF-STATE MUNICIPAL SOLID WASTE AT**  
 3 **EXISTING FACILITIES.**

4 (a) IN GENERAL.—Subtitle D of the Solid Waste Dis-  
 5 posal Act (42 U.S.C. 6941 et seq.) is amended by adding  
 6 at the end the following:

7 **“SEC. 4011. AUTHORITY TO PROHIBIT OR LIMIT RECEIPT**  
 8 **OF OUT-OF-STATE MUNICIPAL SOLID WASTE**  
 9 **AT EXISTING FACILITIES.**

10 “(a) DEFINITIONS.—In this section:

11 “(1) AFFECTED LOCAL GOVERNMENT.—The  
 12 term ‘affected local government’, with respect to a  
 13 facility, means—

14 “(A) the public body authorized by State  
 15 law to plan for the management of municipal  
 16 solid waste for the area in which the facility is  
 17 located or proposed to be located, a majority of  
 18 the members of which public body are elected  
 19 officials;

20 “(B) in a case in which there is no public  
 21 body described in subparagraph (A), the elected  
 22 officials of the city, town, township, borough,  
 23 county, or parish selected by the Governor and  
 24 exercising primary responsibility over municipal  
 25 solid waste management or the use of land in

the jurisdiction in which the facility is located  
or proposed to be located; or

“(C) in a case in which there is in effect  
an agreement or compact under section 105(b),  
contiguous units of local government located in  
each of 2 or more adjoining States that are  
parties to the agreement, for purposes of pro-  
viding authorization under subsection (b), (c),  
or (d) for municipal solid waste generated in  
the jurisdiction of 1 of those units of local gov-  
ernment and received in the jurisdiction of an-  
other of those units of local government.

“(2) AUTHORIZATION TO RECEIVE OUT-OF-  
STATE MUNICIPAL SOLID WASTE.—

“(A) IN GENERAL.—The term ‘authoriza-  
tion to receive out-of-State municipal solid  
waste’ means a provision contained in a host  
community agreement or permit that specifi-  
cally authorizes a facility to receive out-of-State  
municipal solid waste.

“(B) SPECIFIC AUTHORIZATION.—

“(i) SUFFICIENT FORMULATIONS.—  
For the purposes of subparagraph (A),  
only the following, shall be considered to

specifically authorize a facility to receive out-of-State municipal solid waste:

“(I) an authorization to receive municipal solid waste from any place within a fixed radius surrounding the facility that includes an area outside the State;

“(II) an authorization to receive municipal solid waste from any place of origin in the absence of any provision limiting those places of origin to places inside the State;

“(III) an authorization to receive municipal solid waste from a specifically identified place or places outside the State; or

“(IV) a provision that uses such a phrase as ‘regardless of origin’ or ‘outside the State’ in reference to municipal solid waste.

“(ii) INSUFFICIENT FORMULATIONS.—For the purposes of subparagraph (A), either of the following, by itself, shall not be considered to specifically authorize

1 a facility to receive out-of-State municipal  
2 solid waste:

3 “(I) A general reference to the  
4 receipt of municipal solid waste from  
5 outside the jurisdiction of the affected  
6 local government.

7 “(II) An agreement to pay a fee  
8 for the receipt of out-of-State munic-  
9 ipal solid waste.

10 “(C) FORM OF AUTHORIZATION.—To qual-  
11 ify as an authorization to receive out-of-State  
12 municipal solid waste, a provision need not be  
13 in any particular form; a provision shall so  
14 qualify so long as the provision clearly and af-  
15 firmatively states the approval or consent of the  
16 affected local government or State for receipt of  
17 municipal solid waste from places of origin out-  
18 side the State.

19 “(3) DISPOSAL.—The term ‘disposal’ includes  
20 incineration.

21 “(4) EXISTING HOST COMMUNITY AGREE-  
22 MENT.—The term ‘existing host community agree-  
23 ment’ means a host community agreement entered  
24 into before January 1, 2003.

1           “(5) FACILITY.—The term ‘facility’ means a  
 2           landfill, incinerator, or other enterprise that received  
 3           municipal solid waste before the date of enactment  
 4           of this section.

5           “(6) GOVERNOR.—The term ‘Governor’, with  
 6           respect to a facility, means the chief executive officer  
 7           of the State in which a facility is located or proposed  
 8           to be located or any other officer authorized under  
 9           State law to exercise authority under this section.

10          “(7) HOST COMMUNITY AGREEMENT.—The  
 11          term ‘host community agreement’ means a written,  
 12          legally binding agreement, lawfully entered into be-  
 13          tween an owner or operator of a facility and an af-  
 14          fected local government that contains an authoriza-  
 15          tion to receive out-of-State municipal solid waste.

16          “(8) MUNICIPAL SOLID WASTE.—

17               “(A) IN GENERAL.—The term ‘municipal  
 18               solid waste’ means—

19                       “(i) material discarded for disposal  
 20                       by—

21                               “(I) households (including single  
 22                               and multifamily residences); and

23                               “(II) public lodgings such as ho-  
 24                               tels and motels; and

1 “(ii) material discarded for disposal  
 2 that was generated by commercial, institu-  
 3 tional, and industrial sources, to the extent  
 4 that the material—

5 “(I) is essentially the same as  
 6 material described in clause (i); or

7 “(II) is collected and disposed of  
 8 with material described in clause (i)  
 9 as part of a normal municipal solid  
 10 waste collection service.

11 “(B) INCLUSIONS.—The term ‘municipal  
 12 solid waste’ includes—

13 “(i) appliances;

14 “(ii) clothing;

15 “(iii) consumer product packaging;

16 “(iv) cosmetics;

17 “(v) disposable diapers;

18 “(vi) food containers made of glass or  
 19 metal;

20 “(vii) food waste;

21 “(viii) household hazardous waste;

22 “(ix) office supplies;

23 “(x) paper; and

24 “(xi) yard waste.

1           “(C) EXCLUSIONS.—The term ‘municipal  
2           solid waste’ does not include—

3                   “(i) solid waste identified or listed as  
4                   a hazardous waste under section 3001, ex-  
5                   cept for household hazardous waste;

6                   “(ii) solid waste resulting from—

7                           “(I) a response action taken  
8                           under section 104 or 106 of the Com-  
9                           prehensive Environmental Response,  
10                          Compensation, and Liability Act (42  
11                          U.S.C. 9604, 9606);

12                           “(II) a response action taken  
13                           under a State law with authorities  
14                           comparable to the authorities con-  
15                           tained in either of those sections; or

16                           “(III) a corrective action taken  
17                           under this Act;

18                   “(iii) recyclable material—

19                           “(I) that has been separated, at  
20                           the source of the material, from waste  
21                           destined for disposal; or

22                           “(II) that has been managed sep-  
23                           arately from waste destined for dis-  
24                           posal, including scrap rubber to be  
25                           used as a fuel source;



1 “(iv) a material or product returned  
2 from a dispenser or distributor to the man-  
3 ufacturer or an agent of the manufacturer  
4 for credit, evaluation, and possible poten-  
5 tial reuse;

6 “(v) solid waste that is—

7 “(I) generated by an industrial  
8 facility; and

9 “(II) transported for the purpose  
10 of treatment, storage, or disposal to a  
11 facility (which facility is in compliance  
12 with applicable State and local land  
13 use and zoning laws and regulations)  
14 or facility unit—

15 “(aa) that is owned or oper-  
16 ated by the generator of the  
17 waste;

18 “(bb) that is located on  
19 property owned by the generator  
20 of the waste or a company with  
21 which the generator is affiliated;  
22 or

23 “(cc) the capacity of which  
24 is contractually dedicated exclu-  
25 sively to a specific generator;

1 “(vi) medical waste that is segregated  
2 from or not mixed with solid waste;

3 “(vii) sewage sludge or residuals from  
4 a sewage treatment plant; or

5 “(viii) combustion ash generated by a  
6 resource recovery facility or municipal in-  
7 cinerator.

8 “(9) NEW HOST COMMUNITY AGREEMENT.—  
9 The term ‘new host community agreement’ means a  
10 host community agreement entered into on or after  
11 the date of enactment of this section.

12 “(10) OUT-OF-STATE MUNICIPAL SOLID  
13 WASTE.—

14 “(A) IN GENERAL.—The term ‘out-of-  
15 State municipal solid waste’, with respect to a  
16 State, means municipal solid waste generated  
17 outside the State.

18 “(B) INCLUSION.—The term ‘out-of-State  
19 municipal solid waste’ includes municipal solid  
20 waste generated outside the United States.

21 “(11) RECEIVE.—The term ‘receive’ means re-  
22 ceive for disposal.

23 “(12) RECYCLABLE MATERIAL.—

24 “(A) IN GENERAL.—The term ‘recyclable  
25 material’ means a material that may feasibly be

1           used as a raw material or feedstock in place of  
2           or in addition to, virgin material in the manu-  
3           facture of a usable material or product.

4                   “(B) VIRGIN MATERIAL.—In subparagraph  
5           (A), the term ‘virgin material’ includes petro-  
6           leum.

7           “(b) PROHIBITION OF RECEIPT FOR DISPOSAL OF  
8   OUT-OF-STATE WASTE.—No facility may receive for dis-  
9   posal out-of-State municipal solid waste except as provided  
10   in subsections (c), (d), and (e).

11           “(c) EXISTING HOST COMMUNITY AGREEMENTS.—

12                   “(1) IN GENERAL.—Subject to subsection (f), a  
13           facility operating under an existing host community  
14           agreement may receive for disposal out-of-State mu-  
15           nicipal solid waste if—

16                   “(A) the owner or operator of the facility  
17           has complied with paragraph (2); and

18                   “(B) the owner or operator of the facility  
19           is in compliance with all of the terms and con-  
20           ditions of the host community agreement.

21           “(2) PUBLIC INSPECTION OF AGREEMENT.—

22           Not later than 90 days after the date of enactment  
23           of this section, the owner or operator of a facility de-  
24           scribed in paragraph (1) shall—

1           “(A) provide a copy of the existing host  
2           community agreement to the State and affected  
3           local government; and

4           “(B) make a copy of the existing host com-  
5           munity agreement available for inspection by  
6           the public in the local community.

7           “(d) NEW HOST COMMUNITY AGREEMENTS.—

8           “(1) IN GENERAL.—Subject to subsection (f), a  
9           facility operating under a new host community  
10          agreement may receive for disposal out-of-State mu-  
11          nicipal solid waste if—

12           “(A) the agreement meets the require-  
13           ments of paragraphs (2) through (5); and

14           “(B) the owner or operator of the facility  
15           is in compliance with all of the terms and con-  
16           ditions of the host community agreement.

17          “(2) REQUIREMENTS FOR AUTHORIZATION.—

18           “(A) IN GENERAL.—Authorization to re-  
19           ceive out-of-State municipal solid waste under a  
20           new host community agreement shall—

21           “(i) be granted by formal action at a  
22           meeting;

23           “(ii) be recorded in writing in the offi-  
24           cial record of the meeting; and

1 “(iii) remain in effect according to the  
2 terms of the new host community agree-  
3 ment.

4 “(B) SPECIFICATIONS.—An authorization  
5 to receive out-of-State municipal solid waste  
6 shall specify terms and conditions, including—

7 “(i) the quantity of out-of-State mu-  
8 nicipal solid waste that the facility may re-  
9 ceive; and

10 “(ii) the duration of the authorization.

11 “(3) INFORMATION.—Before seeking an author-  
12 ization to receive out-of-State municipal solid waste  
13 under a new host community agreement, the owner  
14 or operator of the facility seeking the authorization  
15 shall provide (and make readily available to the  
16 State, each contiguous local government and Indian  
17 tribe, and any other interested person for inspection  
18 and copying) the following:

19 “(A) A brief description of the facility, in-  
20 cluding, with respect to the facility and any  
21 planned expansion of the facility, a description  
22 of—

23 “(i) the size of the facility;

24 “(ii) the ultimate municipal solid  
25 waste capacity of the facility; and

1 “(iii) the anticipated monthly and  
2 yearly volume of out-of-State municipal  
3 solid waste to be received at the facility.

4 “(B) A map of the facility site that indi-  
5 cates—

6 “(i) the location of the facility in rela-  
7 tion to the local road system;

8 “(ii) topographical and general  
9 hydrogeological features;

10 “(iii) any buffer zones to be acquired  
11 by the owner or operator; and

12 “(iv) all facility units.

13 “(C) A description of—

14 “(i) the environmental characteristics  
15 of the site, as of the date of application for  
16 authorization;

17 “(ii) ground water use in the area, in-  
18 cluding identification of private wells and  
19 public drinking water sources; and

20 “(iii) alterations that may be neces-  
21 sitated by, or occur as a result of, oper-  
22 ation of the facility.

23 “(D) A description of—

1 “(i) environmental controls required  
2 to be used on the site (under permit re-  
3 quirements), including—

4 “(I) run-on and run off manage-  
5 ment;

6 “(II) air pollution control devices;

7 “(III) source separation proce-  
8 dures;

9 “(IV) methane monitoring and  
10 control;

11 “(V) landfill covers;

12 “(VI) landfill liners or leachate  
13 collection systems; and

14 “(VII) monitoring programs; and

15 “(ii) any waste residuals (including  
16 leachate and ash) that the facility will gen-  
17 erate, and the planned management of the  
18 residuals.

19 “(E) A description of site access controls  
20 to be employed by the owner or operator and  
21 road improvements to be made by the owner or  
22 operator, including an estimate of the timing  
23 and extent of anticipated local truck traffic.

24 “(F) A list of all required Federal, State,  
25 and local permits.

1           “(G) Estimates of the personnel require-  
2           ments of the facility, including—

3                   “(i) information regarding the prob-  
4                   able skill and education levels required for  
5                   job positions at the facility; and

6                   “(ii) to the extent practicable, a dis-  
7                   tinction between preoperational and  
8                   postoperational employment statistics of  
9                   the facility.

10           “(H) Any information that is required by  
11           State or Federal law to be provided with re-  
12           spect to—

13                   “(i) any violation of environmental  
14                   law (including regulations) by the owner or  
15                   operator or any subsidiary of the owner or  
16                   operator;

17                   “(ii) the disposition of any enforce-  
18                   ment proceeding taken with respect to the  
19                   violation; and

20                   “(iii) any corrective action and reha-  
21                   bilitation measures taken as a result of the  
22                   proceeding.

23           “(I) Any information that is required by  
24           Federal or State law to be provided with re-



1           spect to compliance by the owner or operator  
2           with the State solid waste management plan.

3           “(J) Any information that is required by  
4           Federal or State law to be provided with re-  
5           spect to gifts and contributions made by the  
6           owner or operator.

7           “(4) ADVANCE NOTIFICATION.—Before taking  
8           formal action to grant or deny authorization to re-  
9           ceive out-of-State municipal solid waste under a new  
10          host community agreement, an affected local govern-  
11          ment shall—

12                 “(A) notify the State, contiguous local gov-  
13                 ernments, and any contiguous Indian tribes;

14                 “(B) publish notice of the proposed action  
15                 in a newspaper of general circulation at least  
16                 15 days before holding a hearing under sub-  
17                 paragraph (C), except where State law provides  
18                 for an alternate form of public notification; and

19                 “(C) provide an opportunity for public  
20                 comment in accordance with State law, includ-  
21                 ing at least 1 public hearing.

22           “(5) SUBSEQUENT NOTIFICATION.—Not later  
23           than 90 days after an authorization to receive out-  
24           of-State municipal solid waste is granted under a  
25           new host community agreement, the affected local

1 government shall give notice of the authorization  
2 to—

3 “(A) the Governor;

4 “(B) contiguous local governments; and

5 “(C) any contiguous Indian tribes.

6 “(e) RECEIPT FOR DISPOSAL OF OUT-OF-STATE MU-  
7 NICIPAL SOLID WASTE BY FACILITIES NOT SUBJECT TO  
8 HOST COMMUNITY AGREEMENTS.—

9 “(1) PERMIT.—

10 “(A) IN GENERAL.—Subject to subsection  
11 (f), a facility for which, before the date of en-  
12 actment of this section, the State issued a per-  
13 mit containing an authorization may receive  
14 out-of-State municipal solid waste if—

15 “(i) not later than 90 days after the  
16 date of enactment of this section, the  
17 owner or operator of the facility notifies  
18 the affected local government of the exist-  
19 ence of the permit; and

20 “(ii) the owner or operator of the fa-  
21 cility complies with all of the terms and  
22 conditions of the permit after the date of  
23 enactment of this section.

24 “(B) DENIED OR REVOKED PERMITS.—A  
25 facility may not receive out-of-State municipal

1 solid waste under subparagraph (A) if the oper-  
2 ating permit for the facility (or any renewal of  
3 the operating permit) was denied or revoked by  
4 the appropriate State agency before the date of  
5 enactment of this section unless the permit or  
6 renewal was granted, renewed, or reinstated be-  
7 fore that date.

8 “(2) DOCUMENTED RECEIPT DURING 1993.—

9 “(A) IN GENERAL.—Subject to subsection  
10 (f), a facility that, during 1993, received out-of-  
11 State municipal solid waste may receive out-of-  
12 State municipal solid waste if the owner or op-  
13 erator of the facility submits to the State and  
14 to the affected local government documentation  
15 of the receipt of out-of-State municipal solid  
16 waste during 1993, including information  
17 about—

18 “(i) the date of receipt of the out-of-  
19 State municipal solid waste;

20 “(ii) the volume of out-of-State mu-  
21 nicipal solid waste received in 1993;

22 “(iii) the place of origin of the out-of-  
23 State municipal solid waste received; and

24 “(iv) the type of out-of-State munic-  
25 ipal solid waste received.

1           “(B) FALSE OR MISLEADING INFORMA-  
 2           TION.—Documentation submitted under sub-  
 3           paragraph (A) shall be made under penalty of  
 4           perjury under State law for the submission of  
 5           false or misleading information.

6           “(C) AVAILABILITY OF DOCUMENTA-  
 7           TION.—The owner or operator of a facility that  
 8           receives out-of-State municipal solid waste  
 9           under subparagraph (A)—

10           “(i) shall make available for inspec-  
 11           tion by the public in the local community  
 12           a copy of the documentation submitted  
 13           under subparagraph (A); but

14           “(ii) may omit any proprietary infor-  
 15           mation contained in the documentation.

16           “(3) BI-STATE METROPOLITAN STATISTICAL  
 17           AREAS.—

18           “(A) IN GENERAL.—A facility in a State  
 19           may receive out-of-State municipal solid waste  
 20           if the out-of-State municipal solid waste is gen-  
 21           erated in, and the facility is located in, the  
 22           same bi-State level A metropolitan statistical  
 23           area (as defined and listed by the Director of  
 24           the Office of Management and Budget as of the  
 25           date of enactment of this section) that contains

1           2 contiguous major cities, each of which is in  
2           a different State.

3           “(B) GOVERNOR AGREEMENT.—A facility  
4           described in subparagraph (A) may receive out-  
5           of-State municipal solid waste only if the Gov-  
6           ernor of each State in the bi-State metropolitan  
7           statistical area agrees that the facility may re-  
8           ceive out-of-State municipal solid waste.

9           “(f) REQUIRED COMPLIANCE.—A facility may not re-  
10          ceive out-of-State municipal solid waste under subsection  
11          (c), (d), or (e) at any time at which the State has deter-  
12          mined that—

13               “(1) the facility is not in compliance with appli-  
14          cable Federal and State laws (including regulations)  
15          relating to—

16                       “(A) facility design and operation; and

17                       “(B)(i) in the case of a landfill—

18                               “(I) facility location standards;

19                               “(II) leachate collection standards;

20                               “(III) ground water monitoring stand-  
21          ards; and

22                               “(IV) standards for financial assur-  
23          ance and for closure, postclosure, and cor-  
24          rective action; and

1           “(ii) in the case of an incinerator, the ap-  
 2           plicable requirements of section 129 of the  
 3           Clean Air Act (42 U.S.C. 7429); and

4           “(2) the noncompliance constitutes a threat to  
 5           human health or the environment.

6           “(g) AUTHORITY TO LIMIT RECEIPT OF OUT-OF-  
 7           STATE MUNICIPAL SOLID WASTE.—

8           “(1) LIMITS ON QUANTITY OF WASTE RE-  
 9           CEIVED.—

10           “(A) LIMIT FOR ALL FACILITIES IN THE  
 11           STATE.—

12           “(i) IN GENERAL.—A State may limit  
 13           the quantity of out-of-State municipal solid  
 14           waste received annually at each facility in  
 15           the State to the quantity described in  
 16           paragraph (2).

17           “(ii) NO CONFLICT.—

18           “(I) IN GENERAL.—A limit under  
 19           clause (i) shall not conflict with—

20           “(aa) an authorization to re-  
 21           ceive out-of-State municipal solid  
 22           waste contained in a permit; or

23           “(bb) a host community  
 24           agreement entered into between  
 25           the owner or operator of a facil-

ity and the affected local government.

“(II) CONFLICT.—A limit shall be treated as conflicting with a permit or host community agreement if the permit or host community agreement establishes a higher limit, or if the permit or host community agreement does not establish a limit, on the quantity of out-of-State municipal solid waste that may be received annually at the facility.

“(B) LIMIT FOR PARTICULAR FACILITIES.—

“(i) IN GENERAL.—An affected local government that has not executed a host community agreement with a particular facility may limit the quantity of out-of-State municipal solid waste received annually at the facility to the quantity specified in paragraph (2).

“(ii) NO CONFLICT.—A limit under clause (i) shall not conflict with an authorization to receive out-of-State municipal solid waste contained in a permit.

1           “(C) EFFECT ON OTHER LAWS.—Nothing  
2           in this subsection supersedes any State law re-  
3           lating to contracts.

4           “(2) LIMIT ON QUANTITY.—

5           “(A) IN GENERAL.—For any facility that  
6           commenced receiving documented out-of-State  
7           municipal solid waste before the date of enact-  
8           ment of this section, the quantity referred to in  
9           paragraph (1) for any year shall be equal to the  
10          quantity of out-of-State municipal solid waste  
11          received at the facility during calendar year  
12          1993.

13          “(B) DOCUMENTATION.—

14               “(i) CONTENTS.—Documentation sub-  
15               mitted under subparagraph (A) shall in-  
16               clude information about—

17                       “(I) the date of receipt of the  
18                       out-of-State municipal solid waste;

19                       “(II) the volume of out-of-State  
20                       municipal solid waste received in  
21                       1993;

22                       “(III) the place of origin of the  
23                       out-of-State municipal solid waste re-  
24                       ceived; and



1                   “(IV) the type of out-of-State  
2                   municipal solid waste received.

3                   “(ii) FALSE OR MISLEADING INFOR-  
4                   MATION.—Documentation submitted under  
5                   subparagraph (A) shall be made under  
6                   penalty of perjury under State law for the  
7                   submission of false or misleading informa-  
8                   tion.

9                   “(3) NO DISCRIMINATION.—In establishing a  
10                  limit under this subsection, a State shall act in a  
11                  manner that does not discriminate against any ship-  
12                  ment of out-of-State municipal solid waste on the  
13                  basis of State of origin.

14                  “(h) AUTHORITY TO LIMIT RECEIPT OF OUT-OF-  
15                  STATE MUNICIPAL SOLID WASTE TO DECLINING PER-  
16                  CENTAGES OF QUANTITIES RECEIVED DURING 1993.—

17                  “(1) IN GENERAL.—A State in which facilities  
18                  received more than 650,000 tons of out-of-State mu-  
19                  nicipal solid waste in calendar year 1993 may estab-  
20                  lish a limit on the quantity of out-of-State municipal  
21                  solid waste that may be received at all facilities in  
22                  the State described in subsection (e)(2) in the fol-  
23                  lowing quantities:

24                         “(A) In calendar year 2004, 95 percent of  
25                         the quantity received in calendar year 1993.

1           “(B) In each of calendar years 2005  
2           through 2008, 95 percent of the quantity re-  
3           ceived in the previous year.

4           “(C) In each calendar year after calendar  
5           year 2008, 65 percent of the quantity received  
6           in calendar year 1993.

7           “(2) UNIFORM APPLICABILITY.—A limit under  
8           paragraph (1) shall apply uniformly—

9           “(A) to the quantity of out-of-State munic-  
10          ipal solid waste that may be received at all fa-  
11          cilities in the State that received out-of-State  
12          municipal solid waste in calendar year 1993;  
13          and

14          “(B) for each facility described in clause  
15          (i), to the quantity of out-of-State municipal  
16          solid waste that may be received from each  
17          State that generated out-of-State municipal  
18          solid waste received at the facility in calendar  
19          year 1993.

20          “(3) NOTICE.—Not later than 90 days before  
21          establishing a limit under paragraph (1), a State  
22          shall provide notice of the proposed limit to each  
23          State from which municipal solid waste was received  
24          in calendar year 1993.

1           “(4) ALTERNATIVE AUTHORITIES.—If a State  
 2           exercises authority under this subsection, the State  
 3           may not thereafter exercise authority under sub-  
 4           section (g).

5           “(i) COST RECOVERY SURCHARGE.—

6           “(1) DEFINITIONS.—In this subsection:

7                   “(A) COST.—The term ‘cost’ means a cost  
 8                   incurred by the State for the implementation of  
 9                   State laws governing the processing, combus-  
 10                  tion, or disposal of municipal solid waste, lim-  
 11                  ited to—

12                           “(i) the issuance of new permits and  
 13                           renewal of or modification of permits;

14                           “(ii) inspection and compliance moni-  
 15                           toring;

16                           “(iii) enforcement; and

17                           “(iv) costs associated with technical  
 18                           assistance, data management, and collec-  
 19                           tion of fees.

20                   “(B) PROCESSING.—The term ‘processing’  
 21                   means any activity to reduce the volume of mu-  
 22                   nicipal solid waste or alter the chemical, biologi-  
 23                   cal or physical state of municipal solid waste,  
 24                   through processes such as thermal treatment,

1           bailing, composting, crushing, shredding, sepa-  
2           ration, or compaction.

3           “(2) AUTHORITY.—A State may authorize, im-  
4           pose, and collect a cost recovery charge on the proc-  
5           essing or disposal of out-of-State municipal solid  
6           waste in the State in accordance with this sub-  
7           section.

8           “(3) AMOUNT OF SURCHARGE.—The amount of  
9           a cost recovery surcharge—

10           “(A) may be no greater than the amount  
11           necessary to recover those costs determined in  
12           conformance with paragraph (5); and

13           “(B) in no event may exceed \$3.00 per ton  
14           of waste.

15           “(4) USE OF SURCHARGE COLLECTED.—All  
16           cost recovery surcharges collected by a State under  
17           this subsection shall be used to fund solid waste  
18           management programs, administered by the State or  
19           a political subdivision of the State, that incur costs  
20           for which the surcharge is collected.

21           “(5) CONDITIONS.—

22           “(A) IN GENERAL.—Subject to subpara-  
23           graphs (B) and (C), a State may impose and  
24           collect a cost recovery surcharge on the proc-

1           essing or disposal within the State of out-of-  
 2           State municipal solid waste if—

3                   “(i) the State demonstrates a cost to  
 4                   the State arising from the processing or  
 5                   disposal within the State of a volume of  
 6                   municipal solid waste from a source out-  
 7                   side the State;

8                   “(ii) the surcharge is based on those  
 9                   costs to the State demonstrated under sub-  
 10                  paragraph (A) that, if not paid for through  
 11                  the surcharge, would otherwise have to be  
 12                  paid or subsidized by the State; and

13                  “(iii) the surcharge is compensatory  
 14                  and is not discriminatory.

15                  “(B) PROHIBITION OF SURCHARGE.—In  
 16                  no event shall a cost recovery surcharge be im-  
 17                  posed by a State to the extent that—

18                   “(i) the cost for which recovery is  
 19                   sought is otherwise paid, recovered, or off-  
 20                   set by any other fee or tax paid to the  
 21                   State or a political subdivision of the  
 22                   State; or

23                   “(ii) to the extent that the amount of  
 24                   the surcharge is offset by voluntary pay-  
 25                   ments to a State or a political subdivision

1 of the State, in connection with the gen-  
 2 eration, transportation, treatment, proc-  
 3 essing, or disposal of solid waste.

4 “(C) SUBSIDY; NON-DISCRIMINATION.—  
 5 The grant of a subsidy by a State with respect  
 6 to entities disposing of waste generated within  
 7 the State does not constitute discrimination for  
 8 purposes of subparagraph (A).

9 “(j) IMPLEMENTATION AND ENFORCEMENT.—A  
 10 State may adopt such laws (including regulations), not in-  
 11 consistent with this section, as are appropriate to imple-  
 12 ment and enforce this section, including provisions for  
 13 penalties.

14 “(k) ANNUAL STATE REPORT.—

15 “(1) FACILITIES.—On February 1, 2004, and  
 16 on February 1 of each subsequent year, the owner  
 17 or operator of each facility that receives out-of-State  
 18 municipal solid waste shall submit to the State infor-  
 19 mation specifying—

20 “(A) the quantity of out-of-State municipal  
 21 solid waste received during the preceding cal-  
 22 endar year; and

23 “(B) the State of origin of the out-of-State  
 24 municipal solid waste received during the pre-  
 25 ceding calendar year.

1 “(2) TRANSFER STATIONS.—

2 “(A) DEFINITION OF RECEIVE FOR TRANS-  
3 FER.—In this paragraph, the term ‘receive for  
4 transfer’ means receive for temporary storage  
5 pending transfer to another State or facility.

6 “(B) REPORT.—On February 1, 2004, and  
7 on February 1 of each subsequent year, the  
8 owner or operator of each transfer station that  
9 receives for transfer out-of-State municipal  
10 solid waste shall submit to the State a report  
11 describing—

12 “(i) the quantity of out-of-State mu-  
13 nicipal solid waste received for transfer  
14 during the preceding calendar year;

15 “(ii) each State of origin of the out-  
16 of-State municipal solid waste received for  
17 transfer during the preceding calendar  
18 year; and

19 “(iii) each State of destination of the  
20 out-of-State municipal solid waste trans-  
21 ferred from the transfer station during the  
22 preceding calendar year.

23 “(3) NO PRECLUSION OF STATE REQUIRE-  
24 MENTS.—The requirements of paragraphs (1) and

1       (2) do not preclude any State requirement for more  
2       frequent reporting.

3           “(4) FALSE OR MISLEADING INFORMATION.—  
4       Documentation submitted under paragraphs (1) and  
5       (2) shall be made under penalty of perjury under  
6       State law for the submission of false or misleading  
7       information.

8           “(5) REPORT.—On March 1, 2004, and on  
9       March 1 of each year thereafter, each State to which  
10      information is submitted under paragraphs (1) and  
11      (2) shall publish and make available to the public a  
12      report containing information on the quantity of out-  
13      of-State municipal solid waste received for disposal  
14      and received for transfer in the State during the  
15      preceding calendar year.”.

16      (b) CONFORMING AMENDMENT.—The table of con-  
17      tents of the Solid Waste Disposal Act (42 U.S.C. prec.  
18      6901) is amended by adding after the item relating to sec-  
19      tion 4010 the following:

“Sec. 4011. Authority to prohibit or limit receipt of out-of-State municipal solid  
waste at existing facilities.”.



1 **SEC. 3. AUTHORITY TO DENY PERMITS FOR OR IMPOSE**  
 2 **PERCENTAGE LIMITS ON RECEIPT OF OUT-**  
 3 **OF-STATE MUNICIPAL SOLID WASTE AT NEW**  
 4 **FACILITIES.**

5 (a) AMENDMENT.—Subtitle D of the Solid Waste  
 6 Disposal Act (42 U.S.C. 6941 et seq.) (as amended by  
 7 section 2(a)), is amended by adding after section 4011 the  
 8 following:

9 **“SEC. 4012. AUTHORITY TO DENY PERMITS FOR OR IMPOSE**  
 10 **PERCENTAGE LIMITS ON RECEIPT OF OUT-**  
 11 **OF-STATE MUNICIPAL SOLID WASTE AT NEW**  
 12 **FACILITIES.**

13 “(a) DEFINITIONS.—In this section:

14 “(1) TERMS DEFINED IN SECTION 4011.—The  
 15 terms ‘authorization to receive out-of-State munic-  
 16 ipal solid waste’, ‘disposal’, ‘existing host community  
 17 agreement’, ‘host community agreement’, ‘municipal  
 18 solid waste’, ‘out-of-State municipal solid waste’, and  
 19 ‘receive’ have the meaning given those terms, respec-  
 20 tively, in section 4011.

21 “(2) OTHER TERMS.—The term ‘facility’ means  
 22 a landfill, incinerator, or other enterprise that re-  
 23 ceives out-of-State municipal solid waste on or after  
 24 the date of enactment of this section.

25 “(b) AUTHORITY TO DENY PERMITS OR IMPOSE  
 26 PERCENTAGE LIMITS.—

1           “(1) ALTERNATIVE AUTHORITIES.—In any cal-  
 2           endar year, a State may exercise the authority under  
 3           either paragraph (2) or paragraph (3), but may not  
 4           exercise the authority under both paragraphs (2)  
 5           and (3).

6           “(2) AUTHORITY TO DENY PERMITS.—A State  
 7           may deny a permit for the construction or operation  
 8           of or a major modification to a facility if—

9                   “(A) the State has approved a State or  
 10                  local comprehensive municipal solid waste man-  
 11                  agement plan developed under Federal or State  
 12                  law; and

13                   “(B) the denial is based on a determina-  
 14                  tion, under a State law authorizing the denial,  
 15                  that there is not a local or regional need for the  
 16                  facility in the State.

17           “(3) AUTHORITY TO IMPOSE PERCENTAGE  
 18           LIMIT.—A State may provide by law that a State  
 19           permit for the construction, operation, or expansion  
 20           of a facility shall include the requirement that not  
 21           more than a specified percentage (which shall be not  
 22           less than 20 percent) of the total quantity of munic-  
 23           ipal solid waste received annually at the facility shall  
 24           be out-of-State municipal solid waste.

25           “(c) NEW HOST COMMUNITY AGREEMENTS.—

11       “(d) UNIFORM AND NONDISCRIMINATORY APPLICA-  
12   TION.—A law under subsection (b) or (c)—

14 “(2) shall not directly or indirectly discriminate  
15 against any particular facility; and

(b) CONFORMING AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 1(b)) is amended by adding at the end of the items relating to subtitle D the following:

**•S 431 IS**

1 **SEC. 4. CONSTRUCTION AND DEMOLITION WASTE.**

2 (a) AMENDMENT.—Subtitle D of the Solid Waste  
3 Disposal Act (42 U.S.C. 6941 et seq.) (as amended by  
4 section 3(a)), is amended by adding after section 4012 the  
5 following:

6 **“SEC. 4013. CONSTRUCTION AND DEMOLITION WASTE.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) TERMS DEFINED IN SECTION 4011.—The  
9 terms ‘affected local government’, ‘Governor’, and  
10 ‘receive’ have the meanings given those terms, re-  
11 spectively, in section 4011.

12 “(2) OTHER TERMS.—

13 “(A) BASE YEAR QUANTITY.—The term  
14 ‘base year quantity’ means—

15 “(i) the annual quantity of out-of-  
16 State construction and demolition debris  
17 received at a State in calendar year 2004,  
18 as determined under subsection  
19 (c)(2)(B)(i); or

20 “(ii) in the case of an expedited imple-  
21 mentation under subsection (c)(5), the an-  
22 nual quantity of out-of-State construction  
23 and demolition debris received in a State  
24 in calendar year 2003.

25 “(B) CONSTRUCTION AND DEMOLITION  
26 WASTE.—

1 “(i) IN GENERAL.—The term ‘con-  
 2 struction and demolition waste’ means de-  
 3bris resulting from the construction, ren-  
 4ovation, repair, or demolition of or similar  
 5work on a structure.

6 “(ii) EXCLUSIONS.—The term ‘con-  
 7 struction and demolition waste’ does not  
 8include debris that—

9 “(I) is commingled with munic-  
 10 ipal solid waste; or

11 “(II) is contaminated, as deter-  
 12 mined under subsection (b).

13 “(C) FACILITY.—The term ‘facility’ means  
 14 any enterprise that receives construction and  
 15 demolition waste on or after the date of enact-  
 16 ment of this section, including landfills.

17 “(D) OUT-OF-STATE CONSTRUCTION AND  
 18 DEMOLITION WASTE.—The term ‘out-of-State  
 19 construction and demolition waste’ means—

20 “(i) with respect to any State, con-  
 21 struction and demolition debris generated  
 22 outside the State; and

23 “(ii) construction and demolition de-  
 24bris generated outside the United States,  
 25 unless the President determines that treat-

1                   ment of the construction and demolition  
 2                   debris as out-of-State construction and  
 3                   demolition waste under this section would  
 4                   be inconsistent with the North American  
 5                   Free Trade Agreement or the Uruguay  
 6                   Round Agreements (as defined in section 2  
 7                   of the Uruguay Round Agreements Act (19  
 8                   U.S.C. 3501)).

9           “(b) CONTAMINATED CONSTRUCTION AND DEMOLI-  
 10 TION DEBRIS.—

11           “(1) IN GENERAL.—For the purpose of deter-  
 12 mining whether debris is contaminated, the gener-  
 13 ator of the debris shall conduct representative sam-  
 14 pling and analysis of the debris.

15           “(2) SUBMISSION OF RESULTS.—Unless not re-  
 16 quired by the affected local government, the results  
 17 of the sampling and analysis under paragraph (1)  
 18 shall be submitted to the affected local government  
 19 for recordkeeping purposes only.

20           “(3) DISPOSAL OF CONTAMINATED DEBRIS.—  
 21 Any debris described in subsection (a)(2)(B)(i) that  
 22 is determined to be contaminated shall be disposed  
 23 of in a landfill that meets the requirements of this  
 24 Act.

1       “(c) LIMIT ON CONSTRUCTION AND DEMOLITION  
2 WASTE.—

3               “(1) IN GENERAL.—A State may establish a  
4 limit on the annual amount of out-of-State construc-  
5 tion and demolition waste that may be received at  
6 landfills in the State.

7               “(2) REQUIRED ACTION BY THE STATE.—A  
8 State that seeks to limit the receipt of out-of-State  
9 construction and demolition waste received under  
10 this section shall—

11               “(A) not later than January 1, 2004, es-  
12 tablish and implement reporting requirements  
13 to determine the quantity of construction and  
14 demolition waste that is—

15                       “(i) disposed of in the State; and

16                       “(ii) imported into the State; and

17               “(B) not later than March 1, 2005—

18                       “(i) establish the annual quantity of  
19 out-of-State construction and demolition  
20 waste received during calendar year 2004;  
21 and

22                       “(ii) report the tonnage received dur-  
23 ing calendar year 2004 to the Governor of  
24 each exporting State.

25               “(3) REPORTING BY FACILITIES.—

“(A) IN GENERAL.—Each facility that receives out-of-State construction and demolition debris shall report to the State in which the facility is located the quantity and State of origin of out-of-State construction and demolition debris received—

“(i) in calendar year 2003, not later than February 1, 2004; and

“(ii) in each subsequent calendar year, not later than February 1 of the calendar year following that year.

“(B) NO PRECLUSION OF STATE REQUIREMENTS.—The requirement of subparagraph (A) does not preclude any State requirement for more frequent reporting.

“(C) PENALTY.—Each submission under this paragraph shall be made under penalty of perjury under State law.

“(4) LIMIT ON DEBRIS RECEIVED.—

“(A) RATCHET.—A State in which facilities receive out-of-State construction and demolition debris may decrease the quantity of construction and demolition debris that may be received at each facility to an annual percentage



1 of the base year quantity specified in subpara-  
2 graph (B).

3 “(B) REDUCED ANNUAL PERCENTAGES.—  
4 A limit on out-of-State construction and demoli-  
5 tion debris imposed by a State under subpara-  
6 graph (A) shall be equal to—

7 “(i) in calendar year 2005, 95 percent  
8 of the base year quantity;

9 “(ii) in calendar year 2006, 90 per-  
10 cent of the base year quantity;

11 “(iii) in calendar year 2007, 85 per-  
12 cent of the base year quantity;

13 “(iv) in calendar year 2008, 80 per-  
14 cent of the base year quantity;

15 “(v) in calendar year 2009, 75 per-  
16 cent of the base year quantity;

17 “(vi) in calendar year 2010, 70 per-  
18 cent of the base year quantity;

19 “(vii) in calendar year 2011, 65 per-  
20 cent of the base year quantity;

21 “(viii) in calendar year 2012, 60 per-  
22 cent of the base year quantity;

23 “(ix) in calendar year 2013, 55 per-  
24 cent of the base year quantity; and

1 “(x) in calendar year 2014 and in  
 2 each subsequent year, 50 percent of the  
 3 base year quantity.

4 “(5) EXPEDITED IMPLEMENTATION.—

5 “(A) RATCHET.—A State in which facili-  
 6 ties receive out-of-State construction and demo-  
 7 lition debris may decrease the quantity of con-  
 8 struction and demolition debris that may be re-  
 9 ceived at each facility to an annual percentage  
 10 of the base year quantity specified in subpara-  
 11 graph (B) if—

12 “(i) on the date of enactment of this  
 13 section, the State has determined the  
 14 quantity of construction and demolition  
 15 waste received in the State in calendar  
 16 year 2003; and

17 “(ii) the State complies with para-  
 18 graphs (2) and (3).

19 “(B) EXPEDITED REDUCED ANNUAL PER-  
 20 CENTAGES.—An expedited implementation of a  
 21 limit on the receipt of out-of-State construction  
 22 and demolition debris imposed by a State under  
 23 subparagraph (A) shall be equal to—

24 “(i) in calendar year 2004, 95 percent  
 25 of the base year quantity;

1 “(ii) in calendar year 2005, 90 per-  
2 cent of the base year quantity;

3 “(iii) in calendar year 2006, 85 per-  
4 cent of the base year quantity;

5 “(iv) in calendar year 2007, 80 per-  
6 cent of the base year quantity;

7 “(v) in calendar year 2008, 75 per-  
8 cent of the base year quantity;

9 “(vi) in calendar year 2009, 70 per-  
10 cent of the base year quantity;

11 “(vii) in calendar year 2010, 65 per-  
12 cent of the base year quantity;

13 “(viii) in calendar year 2011, 60 per-  
14 cent of the base year quantity;

15 “(ix) in calendar year 2012, 55 per-  
16 cent of the base year quantity; and

17 “(x) in calendar year 2013 and in  
18 each subsequent year, 50 percent of the  
19 base year quantity.”.

20 (b) CONFORMING AMENDMENT.—The table of con-  
21 tents in section 1001 of the Solid Waste Disposal Act (42  
22 U.S.C. prec. 6901) (as amended by section 3(b)), is  
23 amended by adding at the end of the items relating to  
24 subtitle D the following:

“Sec. 4013. Construction and demolition debris.”.

1 **SEC. 5. CONGRESSIONAL AUTHORIZATION OF STATE AND**  
2 **LOCAL MUNICIPAL SOLID WASTE FLOW CON-**  
3 **TROL.**

4 (a) AMENDMENT OF SUBTITLE D.—Subtitle D of the  
5 Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) (as  
6 amended by section 4(a)) is amended by adding after sec-  
7 tion 4013 the following:

8 **“SEC. 4014. CONGRESSIONAL AUTHORIZATION OF STATE**  
9 **AND LOCAL GOVERNMENT CONTROL OVER**  
10 **MOVEMENT OF MUNICIPAL SOLID WASTE**  
11 **AND RECYCLABLE MATERIALS.**

12 “(a) FLOW CONTROL AUTHORITY FOR FACILITIES  
13 PREVIOUSLY DESIGNATED.—Any State or political sub-  
14 division thereof is authorized to exercise flow control au-  
15 thority to direct the movement of municipal solid waste  
16 and recyclable materials voluntarily relinquished by the  
17 owner or generator thereof to particular waste manage-  
18 ment facilities, or facilities for recyclable materials, des-  
19 ignated as of the suspension date, if each of the following  
20 conditions are met:

21 “(1) The waste and recyclable materials are  
22 generated within the jurisdictional boundaries of  
23 such State or political subdivision, as such jurisdic-  
24 tion was in effect on the suspension date.

25 “(2) Such flow control authority is imposed  
26 through the adoption or execution of a law, ordi-

1 nance, regulation, resolution, or other legally binding  
 2 provision or official act of the State or political sub-  
 3 division that—

4 “(A) was in effect on the suspension date;

5 “(B) was in effect prior to the issuance of  
 6 an injunction or other order by a court based  
 7 on a ruling that such law, ordinance, regula-  
 8 tion, resolution, or other legally binding provi-  
 9 sion or official act violated the Commerce  
 10 Clause of the United States Constitution; or

11 “(C) was in effect immediately prior to  
 12 suspension or partial suspension thereof by leg-  
 13 islative or official administrative action of the  
 14 State or political subdivision expressly because  
 15 of the existence of an injunction or other court  
 16 order of the type described in subparagraph (B)  
 17 issued by a court of competent jurisdiction.

18 “(3) The State or a political subdivision thereof  
 19 has, for one or more of such designated facilities—

20 “(A) on or before the suspension date, pre-  
 21 sented eligible bonds for sale;

22 “(B) on or before the suspension date,  
 23 issued a written public declaration or regulation  
 24 stating that bonds would be issued and held  
 25 hearings regarding such issuance, and subse-

1           quently presented eligible bonds for sale within  
 2           180 days of the declaration or regulation; or

3           “(C) on or before the suspension date, exe-  
 4           cuted a legally binding contract or agreement  
 5           that—

6                       “(i) was in effect as of the suspension  
 7           date;

8                       “(ii) obligates the delivery of a min-  
 9           imum quantity of municipal solid waste or  
 10          recyclable materials to one or more such  
 11          designated waste management facilities or  
 12          facilities for recyclable materials; and

13                      “(iii) either—

14                               “(I) obligates the State or polit-  
 15          ical subdivision to pay for that min-  
 16          imum quantity of waste or recyclable  
 17          materials even if the stated minimum  
 18          quantity of such waste or recyclable  
 19          materials is not delivered within a re-  
 20          quired timeframe; or

21                               “(II) otherwise imposes liability  
 22          for damages resulting from such fail-  
 23          ure.

24          “(b) WASTE STREAM SUBJECT TO FLOW CON-  
 25   TROL.—Subsection (a) authorizes only the exercise of flow

1 control authority with respect to the flow to any des-  
 2 ignated facility of the specific classes or categories of mu-  
 3 nicipal solid waste and voluntarily relinquished recyclable  
 4 materials to which such flow control authority was applica-  
 5 ble on the suspension date and—

6 “(1) in the case of any designated waste man-  
 7 agement facility or facility for recyclable materials  
 8 that was in operation as of the suspension date, only  
 9 if the facility concerned received municipal solid  
 10 waste or recyclable materials in those classes or cat-  
 11 egories on or before the suspension date; and

12 “(2) in the case of any designated waste man-  
 13 agement facility or facility for recyclable materials  
 14 that was not yet in operation as of the suspension  
 15 date, only of the classes or categories that were  
 16 clearly identified by the State or political subdivision  
 17 as of the suspension date to be flow controlled to  
 18 such facility.

19 “(c) DURATION OF FLOW CONTROL AUTHORITY.—  
 20 Flow control authority may be exercised pursuant to this  
 21 section with respect to any facility or facilities only until  
 22 the later of the following:

23 “(1) The final maturity date of the bond re-  
 24 ferred to in subsection (a)(3)(A) or (B).

1           “(2) The expiration date of the contract or  
2           agreement referred to in subsection (a)(3)(C).

3           “(3) The adjusted expiration date of a bond  
4           issued for a qualified environmental retrofit.

5   The dates referred to in paragraphs (1) and (2) shall be  
6   determined based upon the terms and provisions of the  
7   bond or contract or agreement. In the case of a contract  
8   or agreement described in subsection (a)(3)(C) that has  
9   no specified expiration date, for purposes of paragraph (2)  
10   of this subsection the expiration date shall be the first date  
11   that the State or political subdivision that is a party to  
12   the contract or agreement can withdraw from its respon-  
13   sibilities under the contract or agreement without being  
14   in default thereunder and without substantial penalty or  
15   other substantial legal sanction. The expiration date of a  
16   contract or agreement referred to in subsection (a)(3)(C)  
17   shall be deemed to occur at the end of the period of an  
18   extension exercised during the term of the original con-  
19   tract or agreement, if the duration of that extension was  
20   specified by such contract or agreement as in effect on  
21   the suspension date.

22       “(d) INDEMNIFICATION FOR CERTAIN TRANSPOR-  
23   TATION.—Notwithstanding any other provision of this sec-  
24   tion, no State or political subdivision may require any per-  
25   son to transport municipal solid waste or recyclable mate-



1 rials, or to deliver such waste or materials for transpor-  
 2 tation, to any active portion of a municipal solid waste  
 3 landfill unit if contamination of such active portion is a  
 4 basis for listing of the municipal solid waste landfill unit  
 5 on the National Priorities List established under the Com-  
 6 prehensive Environmental Response, Compensation, and  
 7 Liability Act of 1980 unless such State or political subdivi-  
 8 sion or the owner or operator of such landfill unit has in-  
 9 demnified that person against all liability under that Act  
 10 with respect to such waste or materials.

11 “(e) OWNERSHIP OF RECYCLABLE MATERIALS.—  
 12 Nothing in this section shall authorize any State or polit-  
 13 ical subdivision to require any person to sell or transfer  
 14 any recyclable materials to such State or political subdivi-  
 15 sion.

16 “(f) LIMITATION ON REVENUE.—A State or political  
 17 subdivision may exercise the flow control authority grant-  
 18 ed in this section only if the State or political subdivision  
 19 limits the use of any of the revenues it derives from the  
 20 exercise of such authority to the payment of one or more  
 21 of the following:

22 “(1) Principal and interest on any eligible bond.

23 “(2) Principal and interest on a bond issued for  
 24 a qualified environmental retrofit.

1           “(3) Payments required by the terms of a con-  
2       tract referred to in subsection (a)(3)(C).

3           “(4) Other expenses necessary for the operation  
4       and maintenance and closure of designated facilities  
5       and other integral facilities identified by the bond  
6       necessary for the operation and maintenance of such  
7       designated facilities.

8           “(5) To the extent not covered by paragraphs  
9       (1) through (4), expenses for recycling, composting,  
10      and household hazardous waste activities in which  
11      the State or political subdivision was engaged before  
12      the suspension date. The amount and nature of pay-  
13      ments described in this paragraph shall be fully dis-  
14      closed to the public annually.

15          “(g) INTERIM CONTRACTS.—A contract of the type  
16      referred to in subsection (a)(3)(C) that was entered into  
17      during the period—

18           “(1) before November 10, 1995, and after the  
19      effective date of any applicable final court order no  
20      longer subject to judicial review specifically invali-  
21      dating the flow control authority of the applicable  
22      State or political subdivision; or

23           “(2) after the applicable State or political sub-  
24      division refrained pursuant to legislative or official  
25      administrative action from enforcing flow control au-

1       thority expressly because of the existence of a court  
 2       order of the type described in subsection (a)(2)(B)  
 3       issued by a court of the same State or the Federal  
 4       judicial circuit within which such State is located  
 5       and before the effective date on which it resumes en-  
 6       forcement of flow control authority after enactment  
 7       of this section,

8       shall be fully enforceable in accordance with State law.

9       “(h) AREAS WITH PRE-1984 FLOW CONTROL.—

10       “(1) GENERAL AUTHORITY.—A State that on  
 11       or before January 1, 1984—

12       “(A) adopted regulations under a State  
 13       law that required or directed transportation,  
 14       management, or disposal of municipal solid  
 15       waste from residential, commercial, institu-  
 16       tional, or industrial sources (as defined under  
 17       State law) to specifically identified waste man-  
 18       agement facilities, and applied those regulations  
 19       to every political subdivision of the State; and

20       “(B) subjected such waste management fa-  
 21       cilities to the jurisdiction of a State public utili-  
 22       ties commission,

23       may exercise flow control authority over municipal  
 24       solid waste in accordance with the other provisions  
 25       of this section.

1           “(2) ADDITIONAL FLOW CONTROL AUTHOR-  
2           ITY.—A State or any political subdivision of a State  
3           that meets the requirements of paragraph (1) may  
4           exercise flow control authority over all classes and  
5           categories of municipal solid waste that were subject  
6           to flow control by that State or political subdivision  
7           on May 16, 1994, by directing municipal solid waste  
8           from any waste management facility that was des-  
9           ignated as of May 16, 1994 to any other waste man-  
10          agement facility in the State without regard to  
11          whether the political subdivision in which the munic-  
12          ipal solid waste is generated had designated the par-  
13          ticular waste management facility or had issued a  
14          bond or entered into a contract referred to in sub-  
15          paragraph (A) or (B) of subsection (a)(3), respec-  
16          tively.

17           “(3) DURATION OF AUTHORITY.—The authority  
18          to direct municipal solid waste to any facility pursu-  
19          ant to this subsection shall terminate with regard to  
20          such facility in accordance with subsection (c).

21           “(i) EFFECT ON AUTHORITY OF STATES AND POLIT-  
22          ICAL SUBDIVISIONS.—Nothing in this section shall be in-  
23          terpreted—

1           “(1) to authorize a political subdivision to exer-  
2           cise the flow control authority granted by this sec-  
3           tion in a manner inconsistent with State law;

4           “(2) to permit the exercise of flow control au-  
5           thority over municipal solid waste and recyclable ma-  
6           terials to an extent greater than the maximum vol-  
7           ume authorized by State permit to be disposed at  
8           the waste management facility or processed at the  
9           facility for recyclable materials;

10          “(3) to limit the authority of any State or polit-  
11          ical subdivision to place a condition on a franchise,  
12          license, or contract for municipal solid waste or recy-  
13          clable materials collection, processing, or disposal; or

14          “(4) to impair in any manner the authority of  
15          any State or political subdivision to adopt or enforce  
16          any law, ordinance, regulation, or other legally bind-  
17          ing provision or official act relating to the movement  
18          or processing of municipal solid waste or recyclable  
19          materials which does not constitute discrimination  
20          against or an undue burden upon interstate com-  
21          merce.

22          “(j) EFFECTIVE DATE.—The provisions of this sec-  
23          tion shall take effect with respect to the exercise by any  
24          State or political subdivision of flow control authority on  
25          or after the date of enactment of this section. Such provi-

1 sions, other than subsection (d), shall also apply to the  
 2 exercise by any State or political subdivision of flow con-  
 3 trol authority before such date of enactment, except that  
 4 nothing in this section shall affect any final judgment that  
 5 is no longer subject to judicial review as of the date of  
 6 enactment of this section insofar as such judgment award-  
 7 ed damages based on a finding that the exercise of flow  
 8 control authority was unconstitutional.

9 “(k) STATE SOLID WASTE DISTRICT AUTHORITY.—  
 10 In addition to any other flow control authority authorized  
 11 under this section a solid waste district or a political sub-  
 12 division of a State may exercise flow control authority for  
 13 a period of 20 years after the enactment of this section,  
 14 for municipal solid waste and for recyclable materials that  
 15 is generated within its jurisdiction if—

16 “(1) the solid waste district, or a political sub-  
 17 division within such district, is required through a  
 18 recyclable materials recycling program to meet a  
 19 municipal solid waste reduction goal of at least 30  
 20 percent by the year 2005, and uses revenues gen-  
 21 erated by the exercise of flow control authority  
 22 strictly to implement programs to manage municipal  
 23 solid waste and recyclable materials, other than in-  
 24 cineration programs; and

1           “(2) prior to the suspension date, the solid  
2       waste district, or a political subdivision within such  
3       district—

4           “(A) was responsible under State law for  
5       the management and regulation of the storage,  
6       collection, processing, and disposal of solid  
7       wastes within its jurisdiction;

8           “(B) was authorized by State statute (en-  
9       acted prior to January 1, 1992) to exercise flow  
10      control authority, and subsequently adopted or  
11      sought to exercise the authority through a law,  
12      ordinance, regulation, regulatory proceeding,  
13      contract, franchise, or other legally binding pro-  
14      vision; and

15          “(C) was required by State statute (en-  
16      acted prior to January 1, 1992) to develop and  
17      implement a solid waste management plan con-  
18      sistent with the State solid waste management  
19      plan, and the district solid waste management  
20      plan was approved by the appropriate State  
21      agency prior to September 15, 1994.

22          “(1) SPECIAL RULE FOR CERTAIN CONSORTIA.—For  
23      purposes of this section, if—

24          “(1) two or more political subdivisions are  
25      members of a consortium of political subdivisions es-

1       tablished to exercise flow control authority with re-  
 2       spect to any waste management facility or facility  
 3       for recyclable materials;

4           “(2) all of such members have either presented  
 5       eligible bonds for sale or executed contracts with the  
 6       owner or operator of the facility requiring use of  
 7       such facility;

8           “(3) the facility was designated as of the sus-  
 9       pension date by at least one of such members;

10          “(4) at least one of such members has met the  
 11       requirements of subsection (a)(2) with respect to  
 12       such facility; and

13          “(5) at least one of such members has pre-  
 14       sented eligible bonds for sale, or entered into a con-  
 15       tract or agreement referred to in subsection  
 16       (a)(3)(C), on or before the suspension date, for such  
 17       facility,

18       the facility shall be treated as having been designated, as  
 19       of May 16, 1994, by all members of such consortium, and  
 20       all such members shall be treated as meeting the require-  
 21       ments of subsection (a)(2) and (3) with respect to such  
 22       facility.

23       “(m) RECOVERY OF DAMAGES.—

24           “(1) PROHIBITION.—No damages, interest on  
 25       damages, costs, or attorneys’ fees may be recovered



1 in any claim against any State or local government,  
 2 or official or employee thereof, based on the exercise  
 3 of flow control authority on or before May 16, 1994.

4 “(2) APPLICABILITY.—Paragraph (1) shall  
 5 apply to cases commenced on or after the date of en-  
 6 actment of the Municipal Solid Waste Interstate  
 7 Transportation and Local Authority Act of 2003,  
 8 and shall apply to cases commenced before such date  
 9 except cases in which a final judgment no longer  
 10 subject to judicial review has been rendered.

11 “(n) DEFINITIONS.—For the purposes of this sec-  
 12 tion—

13 “(1) ADJUSTED EXPIRATION DATE.—The term  
 14 ‘adjusted expiration date’ means, with respect to a  
 15 bond issued for a qualified environmental retrofit,  
 16 the earlier of the final maturity date of such bond  
 17 or 15 years after the date of issuance of such bond.

18 “(2) BOND ISSUED FOR A QUALIFIED ENVIRON-  
 19 MENTAL RETROFIT.—The term ‘bond issued for a  
 20 qualified environmental retrofit’ means a bond de-  
 21 scribed in paragraph (4)(A) or (B), the proceeds of  
 22 which are dedicated to financing the retrofitting of  
 23 a resource recovery facility or a municipal solid  
 24 waste incinerator necessary to comply with section  
 25 129 of the Clean Air Act, provided that such bond

1 is presented for sale before the expiration date of  
 2 the bond or contract referred to in subsection  
 3 (a)(3)(A), (B), or (C) that is applicable to such fa-  
 4 cility and no later than December 31, 1999.

5 “(3) DESIGNATED.—The term ‘designated’  
 6 means identified by a State or political subdivision  
 7 for receipt of all or any portion of the municipal  
 8 solid waste or recyclable materials that is generated  
 9 within the boundaries of the State or political sub-  
 10 division. Such designation includes designation  
 11 through—

12 “(A) bond covenants, official statements,  
 13 or other official financing documents issued by  
 14 a State or political subdivision issuing an eligi-  
 15 ble bond; and

16 “(B) the execution of a contract of the  
 17 type described in subsection (a)(3)(C),  
 18 in which one or more specific waste management fa-  
 19 cilities are identified as the requisite facility or facili-  
 20 ties for receipt of municipal solid waste or recyclable  
 21 materials generated within the jurisdictional bound-  
 22 aries of that State or political subdivision.

23 “(4) ELIGIBLE BOND.—The term ‘eligible bond’  
 24 means—

1           “(A) a revenue bond or similar instrument  
 2           of indebtedness pledging payment to the bond-  
 3           holder or holder of the debt of identified reve-  
 4           nues; or

5           “(B) a general obligation bond,  
 6           the proceeds of which are used to finance one or  
 7           more designated waste management facilities, facili-  
 8           ties for recyclable materials, or specifically and di-  
 9           rectly related assets, development costs, or finance  
 10          costs, as evidenced by the bond documents.

11          “(5) FLOW CONTROL AUTHORITY.—The term  
 12          ‘flow control authority’ means the regulatory author-  
 13          ity to control the movement of municipal solid waste  
 14          or voluntarily relinquished recyclable materials and  
 15          direct such solid waste or recyclable materials to one  
 16          or more designated waste management facilities or  
 17          facilities for recyclable materials within the bound-  
 18          aries of a State or political subdivision.

19          “(6) MUNICIPAL SOLID WASTE.—The term  
 20          ‘municipal solid waste’ has the meaning given that  
 21          term in section 4011, except that such term—

22                 “(A) includes waste material removed from  
 23                 a septic tank, septage pit, or cesspool (other  
 24                 than from portable toilets); and

25                 “(B) does not include—

1 “(i) any substance the treatment and  
 2 disposal of which is regulated under the  
 3 Toxic Substances Control Act;

4 “(ii) waste generated during scrap  
 5 processing and scrap recycling; or

6 “(iii) construction and demolition de-  
 7bris, except where the State or political  
 8 subdivision had on or before January 1,  
 9 1989, issued eligible bonds secured pursu-  
 10 ant to State or local law requiring the de-  
 11livery of construction and demolition debris  
 12 to a waste management facility designated  
 13 by such State or political subdivision.

14 “(7) POLITICAL SUBDIVISION.—The term ‘polit-  
 15 ical subdivision’ means a city, town, borough, coun-  
 16 ty, parish, district, or public service authority or  
 17 other public body created by or pursuant to State  
 18 law with authority to present for sale an eligible  
 19 bond or to exercise flow control authority.

20 “(8) RECYCLABLE MATERIALS.—The term ‘re-  
 21 cyclable materials’ means any materials that have  
 22 been separated from waste otherwise destined for  
 23 disposal (either at the source of the waste or at  
 24 processing facilities) or that have been managed sep-  
 25 arately from waste destined for disposal, for the pur-

pose of recycling, reclamation, composting of organic materials such as food and yard waste, or reuse (other than for the purpose of incineration). Such term includes scrap tires to be used in resource recovery.

“(9) SUSPENSION DATE.—The term ‘suspension date’ means, with respect to a State or political subdivision—

“(A) May 16, 1994;

“(B) the date of an injunction or other court order described in subsection (a)(2)(B) that was issued with respect to that State or political subdivision; or

“(C) the date of a suspension or partial suspension described in subsection (a)(2)(C) with respect to that State or political subdivision.

“(10) WASTE MANAGEMENT FACILITY.—The term ‘waste management facility’ means any facility for separating, storing, transferring, treating, processing, combusting, or disposing of municipal solid waste.”.

(b) TABLE OF CONTENTS.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 4(b)), is amended by

1 adding at the end of the items relating to subtitle D the  
2 following:

“Sec. 4014. Congressional authorization of State and local government control  
over movement of municipal solid waste and recyclable materials.”.

3 **SEC. 6. EFFECT ON INTERSTATE COMMERCE.**

4 No action by a State or affected local government  
5 under an amendment made by this Act shall be considered  
6 to impose an undue burden on interstate commerce or to  
7 otherwise impair, restrain, or discriminate against inter-  
8 state commerce.

○